

TITLE 78 RECODIFICATION - TITLE 78B**CHAPTER 13**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act.

Highlighted Provisions:

This bill:

►

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**RENUMBERS AND AMENDS:**

78B-13-101, (Renumbered from 78-45c-101, as enacted by Laws of Utah 2000, Chapter 247)

78B-13-102, (Renumbered from 78-45c-102, as last amended by Laws of Utah 2001, Chapter 255)

78B-13-103, (Renumbered from 78-45c-103, as last amended by Laws of Utah 2007, Chapter 196)

78B-13-104, (Renumbered from 78-45c-104, as enacted by Laws of Utah 2000, Chapter 247)

78B-13-105, (Renumbered from 78-45c-105, as enacted by Laws of Utah 2000, Chapter 247)

78B-13-106, (Renumbered from 78-45c-106, as enacted by Laws of Utah 2000, Chapter 247)

78B-13-107, (Renumbered from 78-45c-107, as enacted by Laws of Utah 2000, Chapter 247)

32 **78B-13-108**, (Renumbered from 78-45c-108, as enacted by Laws of Utah 2000, Chapter
33 247)
34 **78B-13-109**, (Renumbered from 78-45c-109, as enacted by Laws of Utah 2000, Chapter
35 247)
36 **78B-13-110**, (Renumbered from 78-45c-110, as enacted by Laws of Utah 2000, Chapter
37 247)
38 **78B-13-111**, (Renumbered from 78-45c-111, as enacted by Laws of Utah 2000, Chapter
39 247)
40 **78B-13-112**, (Renumbered from 78-45c-112, as enacted by Laws of Utah 2000, Chapter
41 247)
42 **78B-13-201**, (Renumbered from 78-45c-201, as enacted by Laws of Utah 2000, Chapter
43 247)
44 **78B-13-202**, (Renumbered from 78-45c-202, as enacted by Laws of Utah 2000, Chapter
45 247)
46 **78B-13-203**, (Renumbered from 78-45c-203, as enacted by Laws of Utah 2000, Chapter
47 247)
48 **78B-13-204**, (Renumbered from 78-45c-204, as enacted by Laws of Utah 2000, Chapter
49 247)
50 **78B-13-205**, (Renumbered from 78-45c-205, as enacted by Laws of Utah 2000, Chapter
51 247)
52 **78B-13-206**, (Renumbered from 78-45c-206, as enacted by Laws of Utah 2000, Chapter
53 247)
54 **78B-13-207**, (Renumbered from 78-45c-207, as enacted by Laws of Utah 2000, Chapter
55 247)
56 **78B-13-208**, (Renumbered from 78-45c-208, as enacted by Laws of Utah 2000, Chapter
57 247)
58 **78B-13-209**, (Renumbered from 78-45c-209, as last amended by Laws of Utah 2001,
59 Chapter 255)
60 **78B-13-210**, (Renumbered from 78-45c-210, as enacted by Laws of Utah 2000, Chapter
61 247)
62 **78B-13-301**, (Renumbered from 78-45c-301, as enacted by Laws of Utah 2000, Chapter

63 247)

64 **78B-13-302**, (Renumbered from 78-45c-302, as enacted by Laws of Utah 2000, Chapter

65 247)

66 **78B-13-303**, (Renumbered from 78-45c-303, as enacted by Laws of Utah 2000, Chapter

67 247)

68 **78B-13-304**, (Renumbered from 78-45c-304, as last amended by Laws of Utah 2001,

69 Chapter 255)

70 **78B-13-305**, (Renumbered from 78-45c-305, as last amended by Laws of Utah 2001,

71 Chapter 255)

72 **78B-13-306**, (Renumbered from 78-45c-306, as enacted by Laws of Utah 2000, Chapter

73 247)

74 **78B-13-307**, (Renumbered from 78-45c-307, as enacted by Laws of Utah 2000, Chapter

75 247)

76 **78B-13-308**, (Renumbered from 78-45c-308, as enacted by Laws of Utah 2000, Chapter

77 247)

78 **78B-13-309**, (Renumbered from 78-45c-309, as enacted by Laws of Utah 2000, Chapter

79 247)

80 **78B-13-310**, (Renumbered from 78-45c-310, as enacted by Laws of Utah 2000, Chapter

81 247)

82 **78B-13-311**, (Renumbered from 78-45c-311, as enacted by Laws of Utah 2000, Chapter

83 247)

84 **78B-13-312**, (Renumbered from 78-45c-312, as enacted by Laws of Utah 2000, Chapter

85 247)

86 **78B-13-313**, (Renumbered from 78-45c-313, as enacted by Laws of Utah 2000, Chapter

87 247)

88 **78B-13-314**, (Renumbered from 78-45c-314, as last amended by Laws of Utah 2004,

89 Chapter 93)

90 **78B-13-315**, (Renumbered from 78-45c-315, as enacted by Laws of Utah 2000, Chapter

91 247)

92 **78B-13-316**, (Renumbered from 78-45c-316, as enacted by Laws of Utah 2000, Chapter

93 247)
94 **78B-13-317**, (Renumbered from 78-45c-317, as enacted by Laws of Utah 2000, Chapter
95 247)
96 **78B-13-318**, (Renumbered from 78-45c-318, as enacted by Laws of Utah 2000, Chapter
97 247)

98

99 *Be it enacted by the Legislature of the state of Utah:*

100 Section 1. Section **78B-13-101**, which is renumbered from Section 78-45c-101 is
101 renumbered and amended to read:

102 **Part 1. General Provisions**

103 ~~[78-45c-101]~~. **78B-13-101. Title.**

104 This chapter is known as the "Utah Uniform Child Custody Jurisdiction and
105 Enforcement Act."

106 Section 2. Section **78B-13-102**, which is renumbered from Section 78-45c-102 is
107 renumbered and amended to read:

108 ~~[78-45c-102]~~. **78B-13-102. Definitions.**

109 As used in this chapter:

110 (1) "Abandoned" means left without provision for reasonable and necessary care or
111 supervision.

112 (2) "Child" means an individual under 18 years of age and not married.

113 (3) "Child custody determination" means a judgment, decree, or other order of a court
114 providing for the legal custody, physical custody, or parent-time with respect to a child. The
115 term includes a permanent, temporary, initial, and modification order. The term does not
116 include an order relating to child support or other monetary obligation of an individual.

117 (4) "Child custody proceeding" means a proceeding in which legal custody, physical
118 custody, or parent-time with respect to a child is an issue. The term includes a proceeding for
119 divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of
120 parental rights, and protection from domestic violence, in which the issue may appear. The
121 term does not include a proceeding involving juvenile delinquency, contractual emancipation,
122 or enforcement under Part 3, Enforcement.

123 (5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) "Writ of assistance" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Section 3. Section **78B-13-103**, which is renumbered from Section 78-45c-103 is renumbered and amended to read:

~~[78-45c-103].~~ **78B-13-103. Proceedings governed by other law.**

(1) For purposes of this section, "adoption proceeding" means any proceeding under Title ~~[78]~~ 78B, Chapter ~~[30]~~ 6, Adoption.

(2) This chapter does not govern:

(a) an adoption proceeding; or

(b) a proceeding pertaining to the authorization of emergency medical care for a child.

Section 4. Section **78B-13-104**, which is renumbered from Section 78-45c-104 is renumbered and amended to read:

~~[78-45c-104].~~ **78B-13-104. Application to Indian tribes.**

(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as a state of the United States for purposes of Part 1, General Provisions, and Part 2, Jurisdiction.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under the provisions of Part 3, Enforcement.

Section 5. Section **78B-13-105**, which is renumbered from Section 78-45c-105 is renumbered and amended to read:

~~[78-45c-105].~~ **78B-13-105. International application of chapter.**

(1) A court of this state shall treat a foreign country as a state of the United States for purposes of applying Part 1, General Provisions, and Part 2, Jurisdiction.

(2) A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under Part 3, Enforcement.

(3) The court need not apply the provisions of this chapter when the child custody law of the other country violates fundamental principles of human rights.

Section 6. Section **78B-13-106**, which is renumbered from Section 78-45c-106 is renumbered and amended to read:

~~[78-45c-106].~~ 78B-13-106. **Binding force of child custody determination.**

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section ~~[78-45c-108]~~ 78B-13-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

Section 7. Section **78B-13-107**, which is renumbered from Section 78-45c-107 is renumbered and amended to read:

~~[78-45c-107].~~ 78B-13-107. **Priority.**

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

Section 8. Section **78B-13-108**, which is renumbered from Section 78-45c-108 is renumbered and amended to read:

~~[78-45c-108].~~ 78B-13-108. **Notice to persons outside state.**

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for the service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Section 9. Section **78B-13-109**, which is renumbered from Section 78-45c-109 is renumbered and amended to read:

~~[78-45c-109].~~ 78B-13-109. **Appearance and limited immunity.**

(1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and is a responding party under Part 2, Jurisdiction, a party in a proceeding to modify a child custody determination under Part 2, Jurisdiction, or a petitioner in a proceeding to

enforce or register a child custody determination under Part 3, Enforcement, may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

Section 10. Section **78B-13-110**, which is renumbered from Section 78-45c-110 is renumbered and amended to read:

~~[78-45c-110].~~ 78B-13-110. Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(4) Except as provided in Subsection (3), a record shall be made of the communication. The parties shall be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

Section 11. Section **78B-13-111**, which is renumbered from Section 78-45c-111 is renumbered and amended to read:

~~[78-45c-111]~~. **78B-13-111. Taking testimony in another state.**

(1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Section 12. Section **78B-13-112**, which is renumbered from Section 78-45c-112 is renumbered and amended to read:

~~[78-45c-112]~~. **78B-13-112. Cooperation between courts -- Preservation of records.**

(1) A court of this state may request the appropriate court of another state to:

- (a) hold an evidentiary hearing;
- (b) order a person to produce or give evidence under procedures of that state;
- (c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

- (d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

- (e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may:

(a) hold a hearing or enter an order described in Subsection (1); or

(b) order a person in this state to appear alone or with the child in a custody proceeding in another state.

(3) A court of this state may condition compliance with a request under Subsection (2)(b) upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the person to secure his appearance with the child in the other state.

(4) Travel and other necessary and reasonable expenses incurred under Subsections (1) and (2) may be assessed against the parties according to the law of this state.

(5) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

Section 13. Section **78B-13-201**, which is renumbered from Section 78-45c-201 is renumbered and amended to read:

Part 2. Jurisdiction

~~[78-45c-201]~~. **78B-13-201. Initial child custody jurisdiction.**

(1) Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section ~~[78-45c-207]~~ 78B-13-207 or ~~[78-45c-208]~~ 78B-13-208; and

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section ~~[78-45c-207]~~ 78B-13-207 or ~~[78-45c-208]~~ 78B-13-208; or

(d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

Section 14. Section **78B-13-202**, which is renumbered from Section 78-45c-202 is renumbered and amended to read:

~~[78-45c-202].~~ **78B-13-202. Exclusive, continuing jurisdiction.**

(1) Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204, a court of this state that has made a child custody determination consistent with Section ~~[78-45c-201]~~ 78B-13-201 or ~~[78-45c-203]~~ 78B-13-203 has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section ~~[78-45c-207]~~ 78B-13-207.

(3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section ~~[78-45c-201]~~ 78B-13-201.

Section 15. Section **78B-13-203**, which is renumbered from Section 78-45c-203 is

renumbered and amended to read:

~~[78-45c-203].~~ 78B-13-203. Jurisdiction to modify determination.

Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Subsection ~~[78-45c-201]~~ 78B-13-201(1)(a) or (b) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section ~~[78-45c-202]~~ 78B-13-202 or that a court of this state would be a more convenient forum under Section ~~[78-45c-207]~~ 78B-13-207; or

(2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other state.

Section 16. Section **78B-13-204**, which is renumbered from Section 78-45c-204 is renumbered and amended to read:

~~[78-45c-204].~~ 78B-13-204. Temporary emergency jurisdiction.

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203, a child custody determination made under this section becomes a final determination, if:

(a) it so provides; and

(b) this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state

371 having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~
372 78B-13-203, any order issued by a court of this state under this section shall specify in the
373 order a period of time which the court considers adequate to allow the person seeking an order
374 to obtain an order from the state having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201
375 through ~~[78-45c-203]~~ 78B-13-203. The order issued in this state remains in effect until an
376 order is obtained from the other state within the period specified or the period expires.

377 (4) A court of this state that has been asked to make a child custody determination
378 under this section, upon being informed that a child custody proceeding has been commenced,
379 or a child custody determination has been made, by a court of a state having jurisdiction under
380 Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203, shall immediately
381 communicate with the other court. A court of this state that is exercising jurisdiction pursuant
382 to Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203, upon being informed
383 that a child custody proceeding has been commenced, or a child custody determination has
384 been made by a court of another state under a statute similar to this section shall immediately
385 communicate with the court of that state. The purpose of the communication is to resolve the
386 emergency, protect the safety of the parties and the child, and determine a period for the
387 duration of the temporary order.

388 Section 17. Section **78B-13-205**, which is renumbered from Section 78-45c-205 is
389 renumbered and amended to read:

390 ~~[78-45c-205].~~ **78B-13-205. Notice -- Opportunity to be heard -- Joinder.**

391 (1) Before a child custody determination is made under this chapter, notice and an
392 opportunity to be heard in accordance with the standards of Section ~~[78-45c-108]~~ 78B-13-108
393 shall be given to all persons entitled to notice under the law of this state as in child custody
394 proceedings between residents of this state, any parent whose parental rights have not been
395 previously terminated, and any person having physical custody of the child.

396 (2) This chapter does not govern the enforceability of a child custody determination
397 made without notice and an opportunity to be heard.

398 (3) The obligation to join a party and the right to intervene as a party in a child custody
399 proceeding under this chapter are governed by the law of this state as in child custody
400 proceedings between residents of this state.

401 Section 18. Section **78B-13-206**, which is renumbered from Section 78-45c-206 is

402 renumbered and amended to read:

403 ~~[78-45c-206].~~ 78B-13-206. Simultaneous proceedings.

404 (1) Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204, a court of this
405 state may not exercise its jurisdiction under this chapter if at the time of the commencement of
406 the proceeding a proceeding concerning the custody of the child had been previously
407 commenced in a court of another state having jurisdiction substantially in conformity with this
408 chapter, unless the proceeding has been terminated or is stayed by the court of the other state
409 because a court of this state is a more convenient forum under Section ~~[78-45c-207]~~
410 78B-13-207.

411 (2) Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204, a court of this
412 state, before hearing a child custody proceeding, shall examine the court documents and other
413 information supplied by the parties pursuant to Section ~~[78-45c-209]~~ 78B-13-209. If the court
414 determines that a child custody proceeding was previously commenced in a court in another
415 state having jurisdiction substantially in accordance with this chapter, the court of this state
416 shall stay its proceeding and communicate with the court of the other state. If the court of the
417 state having jurisdiction substantially in accordance with this chapter does not determine that
418 the court of this state is a more appropriate forum, the court of this state shall dismiss the
419 proceeding.

420 (3) In a proceeding to modify a child custody determination, a court of this state shall
421 determine whether a proceeding to enforce the determination has been commenced in another
422 state. If a proceeding to enforce a child custody determination has been commenced in another
423 state, the court may:

424 (a) stay the proceeding for modification pending the entry of an order of a court of the
425 other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

426 (b) enjoin the parties from continuing with the proceeding for enforcement; or

427 (c) proceed with the modification under conditions it considers appropriate.

428 Section 19. Section **78B-13-207**, which is renumbered from Section 78-45c-207 is
429 renumbered and amended to read:

430 ~~[78-45c-207].~~ 78B-13-207. Inconvenient forum.

431 (1) A court of this state that has jurisdiction under this chapter to make a child custody
432 determination may decline to exercise its jurisdiction at any time if it determines that it is an

inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate that a court of another state exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) the length of time the child has resided outside this state;

(c) the distance between the court in this state and the court in the state that would assume jurisdiction;

(d) the relative financial circumstances of the parties;

(e) any agreement of the parties as to which state should assume jurisdiction;

(f) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) the familiarity of the court of each state with the facts and issues of the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Section 20. Section **78B-13-208**, which is renumbered from Section 78-45c-208 is renumbered and amended to read:

~~[78-45c-208]~~. **78B-13-208. Jurisdiction declined by reason of conduct.**

(1) Except as otherwise provided in Section ~~[78-45c-204]~~ 78B-13-204 or by other law

of this state, if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203 determines that this state is a more appropriate forum under Section ~~[78-45c-207]~~ 78B-13-207; or

(c) no other state would have jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203.

(2) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections ~~[78-45c-201]~~ 78B-13-201 through ~~[78-45c-203]~~ 78B-13-203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.

Section 21. Section **78B-13-209**, which is renumbered from Section 78-45c-209 is renumbered and amended to read:

~~[78-45c-209]~~. **78B-13-209. Information to be submitted to court.**

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(a) has participated, as a party or witness or in any other capacity, in any other

proceeding concerning the custody of or parent-time with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;

(b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parent-time with, the child and, if so, the names and addresses of those persons.

(2) If the information required by Subsection (1) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in Subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Section 22. Section **78B-13-210**, which is renumbered from Section 78-45c-210 is renumbered and amended to read:

~~[78-45c-210]~~. **78B-13-210. Appearance of parties and child.**

(1) A court of this state may order a party to a child custody proceeding who is in this state to appear before the court personally with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear physically with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is

outside this state, the court may order that a notice given pursuant to Section ~~[78-45c-108]~~ 78B-13-108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody proceeding who is outside this state is directed to appear under Subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Section 23. Section **78B-13-301**, which is renumbered from Section 78-45c-301 is renumbered and amended to read:

Part 3. Enforcement

~~[78-45c-301].~~ 78B-13-301. Definitions.

As used in this part:

(1) "Petitioner" means a person who seeks enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

Section 24. Section **78B-13-302**, which is renumbered from Section 78-45c-302 is renumbered and amended to read:

~~[78-45c-302].~~ 78B-13-302. Scope -- Hague Convention Enforcement.

This chapter may be invoked to enforce:

(1) a child custody determination; and
(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

Section 25. Section **78B-13-303**, which is renumbered from Section 78-45c-303 is renumbered and amended to read:

~~[78-45c-303].~~ 78B-13-303. Duty to enforce.

(1) A court of this state shall recognize and enforce a child custody determination of a

court of another state if the latter court exercised jurisdiction that was in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(2) A court may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The procedure provided by this part does not affect the availability of other remedies to enforce a child custody determination.

Section 26. Section **78B-13-304**, which is renumbered from Section 78-45c-304 is renumbered and amended to read:

~~[78-45c-304].~~ **78B-13-304. Temporary parent-time.**

(1) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (a) a parent-time schedule made by a court of another state; or
- (b) the parent-time provisions of a child custody determination of another state that does not provide for a specific parent-time schedule.

(2) If a court of this state makes an order under Subsection (1)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2, Jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Section 27. Section **78B-13-305**, which is renumbered from Section 78-45c-305 is renumbered and amended to read:

~~[78-45c-305].~~ **78B-13-305. Registration of child custody determination.**

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:

- (a) a letter or other document requesting registration;
- (b) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (c) except as otherwise provided in Section ~~[78-45c-209]~~ 78B-13-209, the name and address of the person seeking registration and any parent or person acting as a parent who has

been awarded custody or parent-time in the child custody determination sought to be registered.

(2) On receipt of the documents required by Subsection (1), the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to Subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by Subsection (2)(b) shall state:

(a) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) that a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and

(c) that failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section ~~[78-45c-108]~~ 78B-13-108 in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

Section 28. Section **78B-13-306**, which is renumbered from Section 78-45c-306 is renumbered and amended to read:

~~[78-45c-306].~~ 78B-13-306. **Enforcement of registered determination.**

(1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify except in accordance with Part 2, Jurisdiction, a registered child custody determination of another state.

Section 29. Section **78B-13-307**, which is renumbered from Section 78-45c-307 is renumbered and amended to read:

~~[78-45c-307].~~ 78B-13-307. **Simultaneous proceedings.**

If a proceeding for enforcement under this part has been or is commenced in this state and a court of this state determines that a proceeding to modify the determination has been commenced in another state having jurisdiction to modify the determination under Part 2, Jurisdiction, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Section 30. Section **78B-13-308**, which is renumbered from Section 78-45c-308 is renumbered and amended to read:

~~[78-45c-308].~~ 78B-13-308. **Expedited enforcement of child custody determination.**

(1) A petition under this part shall be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination shall state:

(a) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision shall be enforced under this chapter or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(c) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;

(d) the present physical address of the child and the respondent, if known; and

(e) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(3) If the child custody determination has been registered and confirmed under Section ~~[78-45c-305]~~ 78B-13-305, the petition shall also state the date and place of registration.

(4) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.

(5) The hearing shall be held on the next judicial day following service of process unless that date is impossible. In that event, the court shall hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.

(6) The order shall state the time and place of the hearing and shall advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under Section ~~[78-45c-312]~~ 78B-13-312, and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) the child custody determination has not been registered and confirmed under Section ~~[78-45c-305]~~ 78B-13-305, and that:

(i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section ~~[78-45c-108]~~ 78B-13-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under Section ~~[78-45c-305]~~ 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

Section 31. Section **78B-13-309**, which is renumbered from Section 78-45c-309 is renumbered and amended to read:

~~[78-45c-309].~~ 78B-13-309. **Service of petition and order.**

Except as otherwise provided in Section ~~[78-45c-311]~~ 78B-13-311, the petition and order shall be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

Section 32. Section **78B-13-310**, which is renumbered from Section 78-45c-310 is renumbered and amended to read:

~~[78-45c-310].~~ 78B-13-310. **Hearing and order.**

(1) Unless the court enters a temporary emergency order pursuant to Section ~~[78-45c-204]~~ 78B-13-204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under Section ~~[78-45c-305]~~ 78B-13-205, and that:

(i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section ~~[78-45c-108]~~ 78B-13-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under Section ~~[78-45c-305]~~ 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

(2) The court shall award the fees, costs, and expenses authorized under Section ~~[78-45c-312]~~ 78B-13-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be

712 invoked in a proceeding under this chapter.

713 Section 33. Section **78B-13-311**, which is renumbered from Section 78-45c-311 is
714 renumbered and amended to read:

715 ~~[78-45c-311].~~ **78B-13-311. Writ to take physical custody of child.**

716 (1) Upon the filing of a petition seeking enforcement of a child custody determination,
717 the petitioner may file a verified application for the issuance of a writ of assistance to take
718 physical custody of the child if the child is likely to suffer serious imminent physical harm or
719 removal from this state.

720 (2) If the court, upon the testimony of the petitioner or other witness, finds that the
721 child is likely to suffer serious imminent physical harm or be imminently removed from this
722 state, it may issue a writ of assistance to take physical custody of the child. The petition shall
723 be heard within 72 hours after the writ is executed. The writ shall include the statements
724 required by Subsection ~~[78-45c-308]~~ 78B-13-308(2).

725 (3) A writ to take physical custody of a child shall:

726 (a) recite the facts upon which a conclusion of serious imminent physical harm or
727 removal from the jurisdiction is based;

728 (b) direct law enforcement officers to take physical custody of the child immediately;
729 and

730 (c) provide for the placement of the child pending final relief.

731 (4) The respondent shall be served with the petition, writ, and order immediately after
732 the child is taken into physical custody.

733 (5) A writ of assistance to take physical custody of a child is enforceable throughout
734 this state. If the court finds on the basis of the testimony of the petitioner or other witness that
735 a less intrusive remedy is not effective, it may authorize law enforcement officers to enter
736 private property to take physical custody of the child. If required by the exigency of the case,
737 the court may authorize law enforcement officers to make a forcible entry at any hour.

738 (6) The court may impose conditions upon placement of a child to ensure the
739 appearance of the child and the child's custodian.

740 Section 34. Section **78B-13-312**, which is renumbered from Section 78-45c-312 is
741 renumbered and amended to read:

742 ~~[78-45c-312].~~ **78B-13-312. Costs, fees, and expenses.**

(1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state except as otherwise provided by law other than this chapter.

Section 35. Section **78B-13-313**, which is renumbered from Section 78-45c-313 is renumbered and amended to read:

~~[78-45c-313].~~ 78B-13-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an order made consistently with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court authorized to do so under Part 2, Jurisdiction.

Section 36. Section **78B-13-314**, which is renumbered from Section 78-45c-314 is renumbered and amended to read:

~~[78-45c-314].~~ 78B-13-314. Appeals.

An appeal may be taken from an order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section ~~[78-45c-204]~~ **78B-13-204**, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Section 37. Section **78B-13-315**, which is renumbered from Section 78-45c-315 is renumbered and amended to read:

~~[78-45c-315].~~ 78B-13-315. Role of prosecutor or attorney general.

(1) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or Attorney General may take any lawful action, including resort to a proceeding under this chapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (a) an existing child custody determination;
- (b) a request from a court in a pending child custody case;

(c) a reasonable belief that a criminal statute has been violated; or

(d) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A prosecutor or attorney general acts on behalf of the court and may not represent any party to a child custody determination.

Section 38. Section **78B-13-316**, which is renumbered from Section 78-45c-316 is renumbered and amended to read:

~~[78-45c-316].~~ **78B-13-316. Role of law enforcement.**

At the request of a prosecutor or the attorney general acting under Section ~~[78-45c-315]~~ 78B-13-315 a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or attorney general with responsibilities under Section ~~[78-45c-315]~~ 78B-13-315.

Section 39. Section **78B-13-317**, which is renumbered from Section 78-45c-317 is renumbered and amended to read:

~~[78-45c-317].~~ **78B-13-317. Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or attorney general and law enforcement officers under Section ~~[78-45c-315]~~ 78B-13-315 or ~~[78-45c-316]~~ 78B-13-316.

Section 40. Section **78B-13-318**, which is renumbered from Section 78-45c-318 is renumbered and amended to read:

~~[78-45c-318].~~ **78B-13-318. Transitional provision.**

A motion or other request for relief made in a child custody or enforcement proceeding which was commenced before the effective date of this chapter is governed by the law in effect at the time the motion or other request was made.